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**PRESERVATION RESTRICTION AGREEMENT**

between

**THE SALEM HOUSING AUTHORITY**

and the

**CITY OF SALEM, MASSACHUSETTS**

  
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**BY AND THROUGH THE SALEM HISTORICAL COMMISSION**

THIS PRESERVATION RESTRICTION AGREEMENT is made this 19<sup>th</sup> day of July, 2023 by and between THE SALEM HOUSING AUTHORITY, located at 27 Charter Street, Salem, Massachusetts ("Grantor") and the CITY OF SALEM ("Grantee"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be administered, managed and enforced by its agent, the SALEM HISTORICAL COMMISSION, located at 98 Washington Street, Salem, Massachusetts, 01970 ("Commission"),

WHEREAS, the Grantor is the owner of certain real property (hereinafter referred to as "**the Property**") with improvements thereon known as The Phillips House (hereinafter referred to as "**the Building**"), located at 86 Essex Street (aka 50 Washington Square South), Salem, Massachusetts, the Property being more particularly described in a deed dated April 29, 1982 from the City of Salem, MA to the Salem Housing Authority recorded in the Essex South Registry of Deeds in Book 6932, Page 106, and in Exhibit A attached hereto and incorporated herein by this reference. The Property is further described on a plan titled "Plan of Land in Salem, Massachusetts Owned by City of Salem", Scale 1" = 20', dated January 21, 1982, prepared by Hayward-Boynton & Williams, Inc., Surveyors - Civil Engineers, and recorded in the Essex South Registry of Deeds in Plan Book 171, Plan 63, a copy of which is attached hereto and incorporated herein as Exhibit B.

WHEREAS, the Building is described as follows, and also depicted in a set of six (6) photographic images taken in December 2022, with copies of said images attached hereto and incorporated herein by reference as Exhibit D:

The Phillips School, located at 50 Washington Square South, was constructed in 1883 on the site of the old Phillips School House. Based on City records, the Richardsonian Romanesque brick building is believed to have been designed by the architectural firm of Wait and Cutting. Robert Wait (1846-1898) of Reading, Massachusetts and Amos Cutting (d.1896) were partners in the late 19<sup>th</sup> century and designed a number of State Armories and County Courthouse in eastern Massachusetts. By the early 19<sup>th</sup> century, the Building housed the East Branch Public Library as well as the Phillips School. In 1924, a rear addition (no longer extant) designed by the architectural firm McLaughlin and Burr was added to the building's south elevation.

The Salem Housing Authority purchased the Property in 1982 and converted the school building into twelve residential units. At that time, the rear addition was removed and two, wood-frame two-and-one-half story Townhouse Buildings (not subject to this restriction) were constructed on the rear of the lot facing Essex Street.

The three-story brick and brownstone Phillips School (Building) is sited on less than an acre near the southeast corner of the Salem Common. The Building rises from a granite foundation. Walls are red brick laid in a stretcher bond on the first story with alternating headers every nine courses on the second and third stories. Brownstone trim includes three beltcourses: a beltcourse above first story windows that incorporate window lintels; a narrower beltcourse below second story windows that incorporates window sills; and a third beltcourse below a slightly projecting corbeled cornice at the roofline. The Building also features brownstone lintels over second story windows. The Building is capped by a ridge hipped roof. Site features include a cast iron capped picket fence with decorative posts located along the sidewalk to

the north of the Building. Other fencing on the property is of modern construction. A large parking area is located to the rear of the Building where the wood-frame Townhouse Buildings (not subject to this restriction) are located. The Townhouse Buildings are rectangular in plan and are oriented south towards Essex Street with identical center enclosed entrances, steep gable roofs and clapboard siding. The Townhouse Buildings also have mirror image elements of partially enclosed exterior stairs capped by a gable dormer to second floor units on outside walls and two story oriel windows below gable dormers on interior elevations.

#### North elevation

The façade of the Phillips School is oriented north facing the Common. The symmetrical façade is dominated by a central square tower that projects slightly from the wall plane, which is further emphasized by recessed sections to each side. The base of the tower features a monumental arched opening capped by brownstone that rises a story and a half. The Building's main entrance door, now altered with modern glass doors with infill panel above, is located in the arched opening. Above, the tower has chamfered corners and features a story and a half, multi-paned window. Above the roofline, each face of the flat-roofed tower is pierced by three arched openings. On the north façade of the tower, these openings sit above a band of corbeling with a pair of louvered openings below with brownstone lintels and brick panels.

To each side of the tower is a series of three bays with the central bay featuring paired windows on each story. This central bay is highlighted with a 2-story arched recess that begins at the second story and ends in gable-roofed pinnacles that break the plane of the roofline. The gables are finished with louvered panels set into semicircular openings with patterned brickwork in the gable peak. Between the second and third stories are decorative brick panels. Flanking bays feature narrow windows on all stories. Other features on this elevation included copper downspouts located within the recess formed by the central tower.

Window sash on the north elevation and throughout the Building have been replaced with bronze aluminum windows. On the first story, windows appear to be double hung 6/6 sash but are actually hinged replacement units. Windows on the second and third stories contain 6/6 double hung sash with clear transoms.

#### East elevation

The east elevation is four bays deep with four symmetrically spaced openings on the first story. The third opening moving north to south is recessed with a brownstone header above the beltcourse at this location. The second and third stories of this elevation feature single windows located above the first two bays moving north to south while paired windows flanked by narrow single windows are centered above the third and fourth bays. Window sash on this elevation match the 6/6 sash with clear transoms found on the façade. Two copper downspouts are located on this elevation: one between the first and second bays and one near the southeast corner of the Building.

#### West elevation

The west elevation features five bays on the first story. The second and third stories feature four bays that replicate the fenestration pattern of the east elevation.

#### South elevation

The south elevation of the Building replicates the fenestration pattern and much of the detailing of the Building's north elevation except that the central bay is recessed without a tower. This bay features the main entrance to the Building with modern glass doors and a fabric entrance canopy. The second and third stories of the central bay feature two windows each. The flanking bays replicate the pattern of the north elevation with paired windows set within a recessed arched opening that begins on the second story and continues to gable-roofed pinnacles that break the roofline. Windows on the second and third stories, except for windows above the entrance canopy, also feature fabric awnings. Brownstone trim on this elevation has been painted.

WHEREAS, due to its historical and architectural significance, the Building and Property are a contributing resource to the Salem Common Historic District, listed in the National Register of Historic Places on May 12, 1976, and are included in the Washington Square Historic District established by the City of Salem on September 26, 1977, and as a result of the foregoing are included in the State Register of Historic Places; and

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter "preservation values") and significance of the Building and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building; and

WHEREAS, the preservation values of the Building and Property are documented in a series of photographs and documents (hereinafter, 'Baseline Documentation') incorporated herein and attached hereto as by reference as Exhibit A, B, and C, which Baseline Documentation the parties agree provides an accurate representation of the Building and Property as of the date of this grant; and

WHEREAS, the Baseline Documentation (Exhibits A, B, and C) shall consist of the following:

- Exhibit A. Legal Property Description
- Exhibit B. Plan of Land
- Exhibit C. Assessors' Parcel Map Detail of Parcel 35-0417
- Exhibit D. Six (6) Baseline Photographs Dated December, 2022

WHEREAS, the Building is in need of preservation and restoration; and

WHEREAS, upon the recommendation of the Community Preservation Committee and approved as Project by the City Council, the sum of One Hundred Seventy-One Thousand Six Hundred Eighty-One Dollars and Twenty-Nine Cents (\$171,681.29) from the Community Preservation Fund ("Funds") was appropriated for the purpose of funding a grant for the restoration, waterproofing, and brick repointing of the Building; and

WHEREAS, the Grantor and the Grantee have reached an Agreement whereby the Grantee shall provide the Funds so appropriated to the Grantor to be expended for the preservation and renovation of the aforementioned Building, under the terms and conditions set forth herein and in such other documents as the parties may execute, and the Grantor agrees to accept such Funds to be used exclusively for such purposes and under such terms and conditions ("Restriction" or "Preservation Restriction");

WHEREAS, the Grantor in further consideration of the receipt of such Funds and to ensure the preservation of the aforementioned Building agrees and desires, to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Building;

WHEREAS, the preservation of the Building is important to the quality of life of the residents of this public housing development, as well as the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 ("Act"); and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Salem and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40C, authorized and directed by the Grantee to manage the Property and Buildings burdened by such restrictions, consistent with the provisions of the Act and to administer and enforce this preservation restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross in perpetuity this Restriction over the exterior of the Building to be administered, managed and enforced by the Commission.

1. Purpose: It is the Purpose of this Restriction to assure that, the architectural, historic, and cultural features of the exterior of the Building and Property will be retained and maintained forever substantially in its current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the exterior of the Building and Property that will significantly impair or interfere with the Building's preservation values or alter views of the exterior of the Building.

2. Preservation Restriction: The Grantor grants the Grantee the right to forbid or limit:

- a. any alteration to the appearance, materials, workmanship, condition or structural stability of the exterior of the Building unless (i) clearly of a minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with the requirements of paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit E and hereby incorporated by reference.
- b. any other act or use that may be harmful to the historic preservation of the exterior of the Building or the Property.

3. Restriction as to Expenditure of Funds: Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall expend such Community Preservation Funds to rehabilitate and restore the Building.

4.1. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair to that existing following the substantial completion of restoration work to be completed as a result of the expenditure of Community Preservation Funds. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Commission and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

4.2. Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:

- a. the Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Building;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
- d. no additions and/or outbuildings may be attached to the Building without prior approval of the Grantor; and

- e. moving the Building to another location shall be forbidden without prior approval of the Commission.

5. Conditional Rights Requiring Grantee Approval: Subject to Paragraph 4 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the exterior of the Building without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the exterior of the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Building. Grantor shall similarly not make any alterations to the surrounding Property that would obscure the current view of the Building, such as the installation of permanent signage or trees or very large shrubs without approval of the Commission.

Activities by Grantor to maintain the Building and the Property which are intended to be performed in accordance with the provisions of paragraph 4.1, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit E), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:

- a. the right to engage in all those acts and uses that:
  - (i) are permitted by governmental statute or regulation;
  - (ii) do not substantially impair the preservation values of the Building and Property; and
  - (iii) are not inconsistent with the Purpose of this Restriction;
- b. pursuant to the provisions of Paragraph 4.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of Paragraph 5;

7. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at Paragraphs 2 and 5 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to the Commission a timetable for the proposed activity sufficient to permit the Commission to monitor such activity. Within sixty (60) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within sixty (60) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time, provided that nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and Property and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within sixty (60) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which report shall include the following:

- a. an assessment of the nature and extent of the damage;
- b. a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and
- c. a report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.

10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in Paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may agree to seek to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A" or better by Best's or equivalent rating agency for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and Building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written

request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, commissions, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

13. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: Salem Housing Authority  
27 Charter Street  
Salem, MA 01970

Grantee: Salem Historical Commission  
c/o City of Salem  
Department of Planning & Community Development  
98 Washington Street  
Salem, MA 01970

Each party may change its address set forth herein by a notice to such effect to the other party.

14. Evidence of Compliance: Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.

15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the Building and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement, including a failure to expend such Funds for their intended purposes, may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Building, repayment of the Funds, and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness fees. Grantor shall, at its own expense and with approval of Commission, reverse any actions or activities which violated this restriction and altered the Building.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the Building be maintained in any particular state or condition, notwithstanding the Commission's acceptance hereof. Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of the exercising of its right to enforce this Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. By its acceptance of this Preservation Restriction, the Commission does not assume any liability or obligation relating to the condition of the Building or the Property, including compliance with hazardous materials or other environmental laws and regulations.

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Building or Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

18. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.

19. Runs with the Land: Except as provided in Paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property and shall inure to the benefit of the Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of this Restriction. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor", "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any Grantorship interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes, inter alia, are the preservation of buildings or sites of historical significance. Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law.

22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Salem, and the Salem Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex District Registry of Deeds.



23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued Grantorship or use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals following public hearings by the City of Salem and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

24. Condemnation: If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.

25. Interpretation: The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction:

- a. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Property shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained herein.
- b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the entire Restriction of the parties.
- c. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction either in existence now or at any time subsequent hereto.
- d. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Preservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

26. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not

affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.


27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of Salem and the Massachusetts Historical Commission to determine that such a release is in the public interest.

28. Archaeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 1<sup>st</sup> day of MAY, 2023.  
By:

**GRANTOR:**

Salem Housing Authority

  
\_\_\_\_\_  
Cathy Hoog, Executive Director

COMMONWEALTH OF MASSACHUSETTS

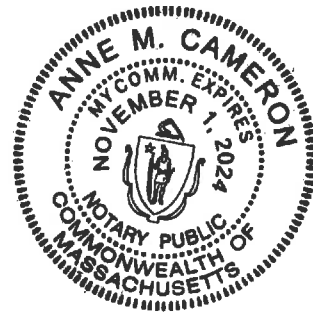
Essex,ss.

On this 1<sup>st</sup> day of MAY, 2023, before me, the undersigned notary public, personally appeared Cathy Hoog, proved to me through satisfactory evidence of identification, which was (~~current driver's license~~) (~~current U.S. passport~~) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

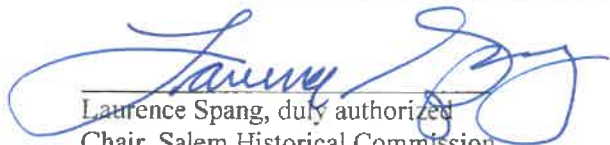


Notary Public

My Commission Expires: 11-1-2024



**ACCEPTANCE BY THE SALEM HISTORICAL COMMISSION**

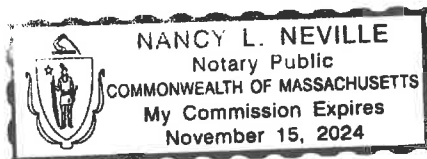
  
Laurence Spang, duly authorized  
Chair, Salem Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex,ss.

On this 5<sup>th</sup> day of July, 2023 before me, the undersigned notary public, personally appeared Laurence Spang, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Salem Historical Commission.

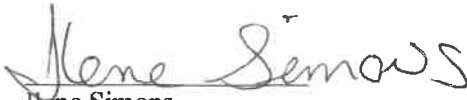
  
Notary Public  
My Commission Expires: 11/15/2024



**ACCEPTANCE AND APPROVAL BY THE CITY OF SALEM**

I, the undersigned City Clerk of the City of Salem, Massachusetts, hereby certify that at a meeting duly held on June 8, 2023, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

By its Clerk

  
Ilene Simons  
City Clerk

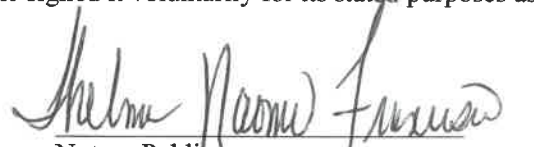
The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Salem

  
Dominick Pangallo  
Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

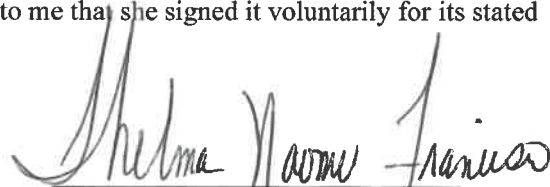
On this 8th day of June, 2023, before me, the undersigned notary public, personally appeared Ilene Simons, proved to me through satisfactory evidence of identification, which my personal knowledge of the identity of the principal, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as Clerk of the City of Salem.

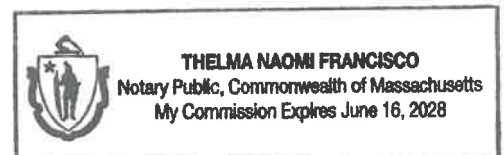
  
Notary Public  
My Commission Expires: June 16, 2028

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 8th day of June, 2023, before me, the undersigned notary public, personally appeared, Dominick Pangallo, proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes as Mayor of the City of Salem.

  
Notary Public  
My Commission Expires:



**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION**

**COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

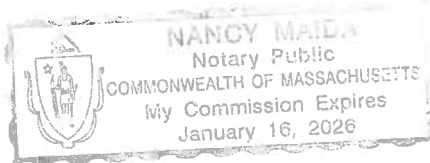
*Brona Simon*

\_\_\_\_\_  
Brona Simon  
Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 19<sup>th</sup> day of July, 2023, before me, the undersigned notary public, personally appeared Brona Simon proved to me through satisfactory evidence of identification, which was (~~a current driver's license~~) (~~a current U.S. passport~~) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.



*Nancy Maida*

\_\_\_\_\_  
Notary Public  
My Commission Expires:

*January 16, 2026*

# EXHIBIT A

## Legal Property Description

The land with the buildings thereon, situated at 50 Washington Square South (with a street address of 86 Essex Street), Salem, Essex County, Massachusetts, and being described as follows:

BEGINNING at a cut on a granite curb at the SOUTHEASTERLY Corner of the parcel on Essex Street, thence turning and running;

SOUTH 79° 21' 30" W, one hundred thirty-one and 22/100 (131.22) feet by Essex Street, thence turning and running

SOUTH 89° 20' 27" W, forty-two and 04/100 (42.04) feet by Essex Street, thence turning and running

SOUTH 89° 06' 40" W, forty and 02/100 (40.02) feet to the land of George A. Ahmed, thence turning and running

NORTH 01° 37' 10" E, one hundred eleven and 04/100 (111.04) feet to the land of Thomas A. and Dorothy J. O'Donnell, thence turning and running

NORTH 85° 16' 08" E, four and 12/100 (4.12) feet to the land of Thomas A. and Dorothy J. O'Donnell, thence turning and running

NORTH 04° 41' 00" W, fifty-five and 54/100 (55.54) feet by the land of Thomas A. and Dorothy J. O'Donnell, thence turning and running

NORTH 85° 54' 30" E, one hundred eighty and 20/100 (180.20) feet by said Washington Square (South) to the land of Emile Du Brule and Vichai Chaicharden, thence turning and running

SOUTH 10° 04' 12" E, sixty-four and 50/100 (64.50) feet by said land of Emile Du Brule and Vichai Chaicharden, thence turning and running

NORTH 79° 55' 48" E, one and 16/100 (1.16) feet by said land of Emile Du Brule and Vichai Chaicharden, thence turning and running

SOUTH 10° 04' 12" E, ninety-two and 33/100 (92.33) feet by said land of Emile Du Brule and Vichai Chaicharden and land of Richard D. and June E. Anderson to Essex Street and the point begun at.

Containing 32.305 square feet, all as shown on "Plan of Land in Salem, Massachusetts owned by the City of Salem, Scale 1"-20", dated January 21, 1982, Hayward-Boynton & Williams, Inc., Surveyors, Civil Engineers, 47 West Elm Street, Brockton, Mass."

This Deed is made pursuant to the authority granted in a certain vote of the City Council dated August 20, 1981, a certified copy of which is attached and is made a part of this Deed.

This Deed is also made pursuant to the notification provided for in Massachusetts General Laws, Chapter 40, Section 15, a copy of which is attached hereto.

This Deed is further subject to all the conditions, covenants, restrictions and reservations set forth in said City Council Order dated August 20, 1981, all of which are made a part of this Deed and a condition of this conveyance.

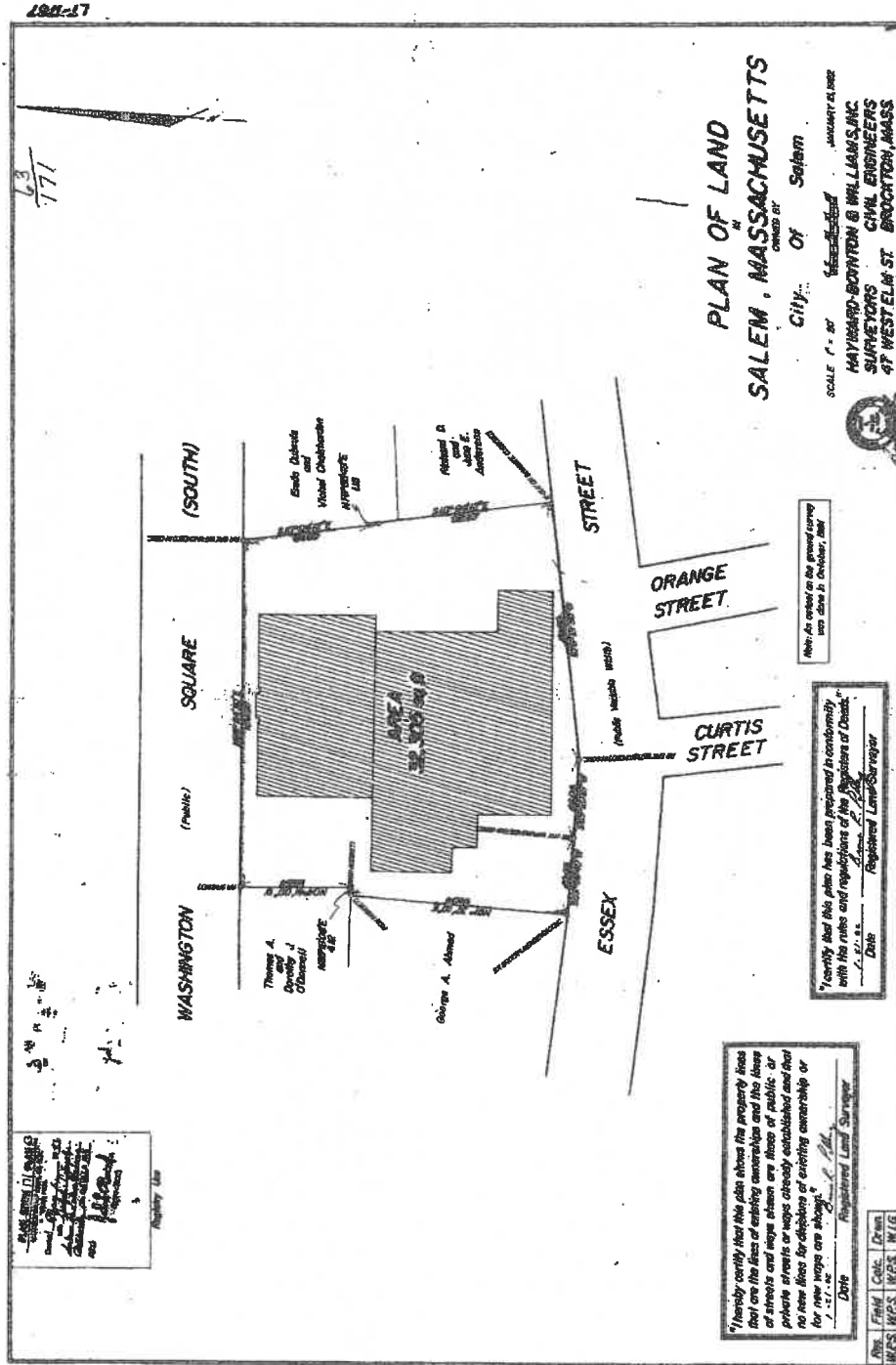
And in particular, this conveyance is made on the condition that if said property is no longer needed for housing under the Chapter 689 Handicapped Program, that said property shall revert to the City of Salem in its then condition.

The provisions of Massachusetts General Laws Chapter 44, Section 63A have been complied with in full.

Source: Southern Essex District Registry of Deeds Book 6932 Page 106.

# EXHIBIT B

## Plan of Land



63  
171

63  
171

PLAN OF LAND  
IN  
SALEM, MASSACHUSETTS  
OWNED BY  
City of Salem  
SCALE 1" = 20'  
HAYWARD-BENTON & WILLIAMS, INC.  
SURVEYORS CIVIL ENGINEERS  
47 WESTLAIN ST. BROCKTON, MASS.  
JANUARY 21, 1982

"I hereby certify that this plan has been prepared in conformity with the rules and regulations of the Registrars of Deeds."

"I hereby certify that this plan has been prepared in conformity with the rules and regulations of the Registrars of Deeds."

"I hereby certify that this plan has been prepared in conformity with the rules and regulations of the Registrars of Deeds."

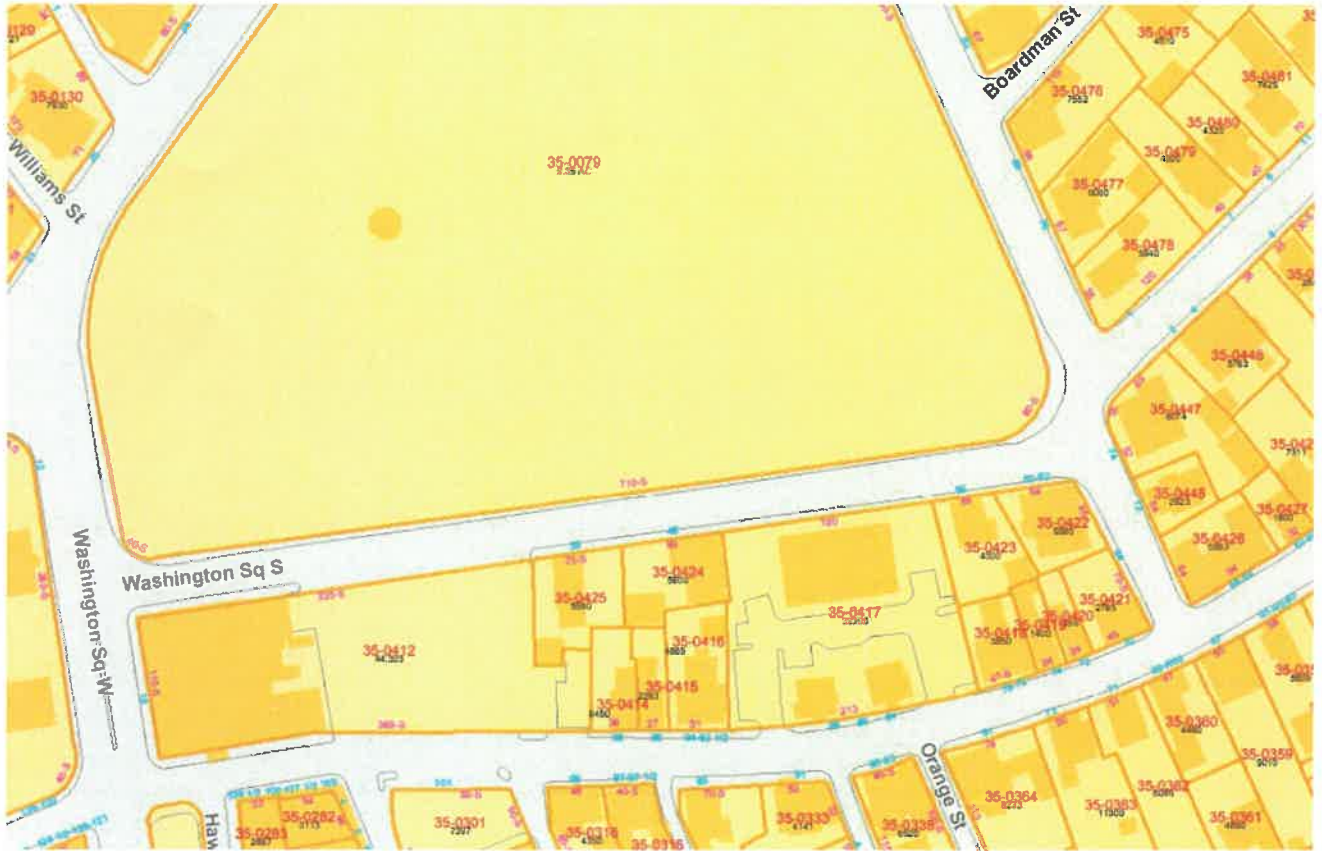
DATE  
12/1/82  
MRS. FRANK L. COLE, DEED REGISTRAR  
MRS. WENDY L. WOODS, IN.T.G.



# EXHIBIT C

## Salem Assessors' Map

### Parcel 35-0417



# EXHIBIT D

## Baseline Photographs



Photo 1- Front façade, South Washington Square (North elevation)  
December, 2022



Photo 2- Right side (West elevation)  
December, 2022



Photo 3- Rear (South elevation)  
December, 2022



Photo 4- Left side (East elevation)  
December, 2022



Photos 5 & 6- Townhouse Buildings from Essex Street (not subject to this restriction)  
December, 2022



# EXHIBIT E

## RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the Property. Under this section permission from the SALEM HISTORICAL COMMISSION (COMMISSION) is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require COMMISSION review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the COMMISSION, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by the property owner.

### PAINT

Minor - Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

### WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

### EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

### LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

### HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the COMMISSION and their impact on the historic integrity of the property assessed.

It is the responsibility of the property owner to notify the COMMISSION in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the preservation restriction is to enable the COMMISSION to review proposed alterations and assess their impact on the integrity of the building, not to preclude future change. COMMISSION will attempt to work with property owner to develop mutually satisfactory solutions, which are in the best interests of the Property.